TENNESSEE DEPARTMENT OF HUMAN SERVICES

DIVISION OF REHABILITATION SERVICES

VOCATIONAL REHABILITATION SERVICES

POLICY MANUAL October 2009

TABLE OF CONTENTS

- 1. Mission, Core Values, Guiding Principles and Goals
- 2. Purpose, Legal Basis, and Assurances
- 3. Confidentiality
- 4. Referrals and Applications
- 5. Trial Work Experiences and Extended Evaluation
- 6. Eligibility, Order of Selection (Priority for Services) and Ineligibility
- 7. Informed Choice
- 8. Comparable Benefits
- 9. Individualized Plan for Employment (IPE)
- 10. Participation of Individuals in Cost of Services Based on Financial Need
- 11. Transition from School to Work
- 12. Scope of Services
- 13. Record of Service
- 14. Employment
- 15. Supported Employment
- 16. Self-Employment
- 17. Case Closure
- 18. Post-Employment Services
- 19. Annual review of individuals closed in sheltered employment
- 20. Due Process

1. <u>Mission, Core Values, Guiding Principles and Goals</u>

1.1 Mission

Provide timely and efficient services, leading to employment, to all eligible individuals with a disability to enable them to achieve and maximize their individual level of independence.

1.2 Core Values

To respect individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers and to respect the privacy, rights, and equal access of individuals with disabilities.

1.3 Guiding Principles

Millions of Americans have one or more disabilities. Disability in no way diminishes the right of individuals to live independently, enjoy self-determination, make choices, contribute to society, pursue meaningful careers, and enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society.

1.4 Goals

To provide individuals with disabilities, especially those with the most significant disabilities, with the tools necessary to:

- Participate as full partners in the vocational rehabilitation process;
- · Make meaningful and informed choices;
- Live independently; and
- Obtain gainful employment which is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choices of the individual.

2. Purpose, Legal Basis, and Assurances

2.1 Purpose

The Department of Human Services, Division of Rehabilitation Services, is the designated State unit that is primarily concerned with vocational and other rehabilitation of individuals with physical and mental disabilities. The Division of Rehabilitation Services (DRS or the Division) is responsible for the vocational rehabilitation program which includes the determination of eligibility, the determination of the nature and scope of services, and the provision of rehabilitation services for individuals consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that they may prepare for and engage in employment.

The policy that follows is consistent with federal and state law and regulations. Few detailed procedures are included on how these policies are to be implemented because the individualized nature of the program dictates that there is no one best way to accomplish the intent of the law. DRS employees are expected to understand, comply

with, and implement this policy in the manner most appropriate to meet the vocational rehabilitation needs of each individual.

2.2 Legal Basis

The Vocational Rehabilitation Services Program is authorized by Title I of the Rehabilitation Act of 1973 (29 U.S.C. § 701-744) as amended;

Federal departments and regulations governing the state Vocational Rehabilitation Services program;

Department of Education, Office of Special Education and Rehabilitation Services, Rehabilitation Services Administration

34 CFR Part 361 Final rules and regulations (including all requirements established under other applicable rules and regulations referenced within), Federal Register: January 17, 2001 (Volume 66, Number 11), effective February 16, 2001.

In the event these policies conflict with state or federal law, state and federal law shall control.

The Tennessee Department of Human Services, Division of Rehabilitation Services, is the sole state entity designated to administer the vocational rehabilitation program and is authorized to submit a plan as a condition for receipt of federal funds under Title I of the Rehabilitation Act of 1973, as amended, and agrees to administer the program in accordance with this State Plan, the Act, and all applicable regulations, policies, and procedures established by the Secretary.

2.3 Assurances

- **2.3.1** Eligibility for rehabilitation services is determined without regard to sex, race, creed, age, color, national origin, or type of disability.
- **2.3.2** There is no residency requirement that would exclude from services an otherwise eligible individual who is presently living in the state.
- **2.3.3** All programs, projects, and activities shall be carried out in a manner consistent with respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on the principles of informed choice.
- **2.3.4** A person with a disability shall be presumed to be able to benefit from vocational rehabilitation services in terms of an employment outcome unless there is clear and convincing evidence to the contrary.
- 2.3.5 DRS shall furnish appropriate communication aids and services to eligible individuals when necessary in pursuit of an employment outcome and in accordance with applicable regulations and agreements. In determining the type of communication aid or service, primary consideration shall be given to the request of the individual with the disability.
- **2.3.6** All policies are applicable statewide to ensure, to the maximum extent possible, equitable determination of eligibility or ineligibility and provision of services.

3. Confidentiality

3.1 General provisions

It is unlawful, except for purposes directly connected with the administration of the program, to solicit, disclose, receive, or make use of, participate in, or permit the use of any information concerning applicants, clients, or case service records. DRS employees are required to safeguard confidential information, including electronic information, photographs, and lists of names, so that unauthorized persons shall not have access. Staff shall abide by the confidentiality policies of the Tennessee Department of Human Services and the Division of Rehabilitation Services.

3.2 Confidentiality

All applicants/eligible individuals or their representatives, as well as service providers, cooperating agencies, and interested persons must be informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and release of information.

All applicants or their representatives must be informed about the need to collect personal information and about the policies concerning its use, including:

- Identification of the authority under which information is collected;
- Explanation of the purposes for which the information will be used or released;
- Explanation of whether providing requested information is mandatory or voluntary and the effects of not providing requested information;
- Identification of situations in which DRS does or does not require informed written consent before information may be released; and
- Identification of other agencies to which information is routinely released.

DRS may charge a reasonable fee for providing copies of a record for purposes other than those of the vocational rehabilitation program.

3.3 State program use

Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program. DRS may obtain personal information from service providers and cooperating entities only with assurances that the information may not be further divulged, except as provided in Sections 3.3, 3.4, and 3.5

- 3.4 Information requested in writing by an applicant or eligible individual must be released to the individual or the individual's representative in a timely manner, subject to the following provisions:
 - Medical, psychological, or other information that DRS determines may be harmful to
 the individual may not be released directly to the individual, but must be provided to
 the individual through a third party chosen by the individual, which may include an
 advocate, family member, qualified medical or mental health professional or others.
 If the individual has a court-appointed representative, the information may be
 released only to that representative;
 - Personal information obtained from another entity or organization may be released only under the conditions established by the other entity or organization;
 - An applicant or eligible individual who believes that information in the record of services is inaccurate or misleading may request that DRS amend the information. If

the information is not amended, the request for an amendment must be documented in the record.

3.5 Release for audit, evaluation, and research

Personal information may be released for audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program or for purposes that would significantly improve the quality of life for applicants and eligible individuals. However, this information may be released only if the organization, entity, or individual conducting the audit, evaluation or research assures that:

- The information will be used only for the purposes for which it is being provided;
- The information will be released only to persons officially connected with the audit, evaluation, or research;
- The information will not be released to the involved individual:
- The information will be managed in a manner that safeguards confidentiality; and
- The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

3.6 Release to other programs or authorities

With informed written consent of the individual or the individual's representative, DRS may release personal information to another entity or organization for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative; and only to the extent that the other entity or organization demonstrates that the information requested is necessary for its program. Further provisions include:

- If DRS determines that medical or psychological information may be harmful to the individual, that information may be released only if the other entity/organization assures that the information will be used only for the purpose for which it is being provided and will not be released to the individual;
- DRS must release personal information if required by Federal law or regulations or in connection with investigations related to law enforcement, fraud or abuse in response to an order issued by an authorized judicial officer, unless such release is expressly prohibited by federal or state law or regulation;
- DRS may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

4. Referrals and Applications

4.1 Referrals

DRS must handle referrals for vocational rehabilitation services, including referrals of individuals made through the One-Stop (career center) service delivery system, in a prompt and equitable manner.

DRS staff must make timely efforts to inform referred individuals of application requirements and to initiate an assessment for determining eligibility and priority for services.

4.2 Applications

4.2.1 Timelines

An eligibility determination must be made within sixty (60) days after an individual has submitted an application for vocational rehabilitation services, including applications through common intake procedures in One-Stop centers (career centers), unless:

- Exceptional and unforeseen circumstances preclude making an eligibility determination within sixty (60) days; and
 - o Those circumstances are beyond the control of DRS staff; and
 - o The individual and the counselor agree to a specific extension of time; or
- DRS is exploring the individual's abilities, capabilities, and capacity to perform in work situations through trial work experiences or, in specified circumstances, and extended evaluation.

4.2.2 Application requirements

An individual is considered to have submitted an application when that individual or the individual's representative, as appropriate, has:

- · Completed and signed a DRS application form;
- Requested vocational rehabilitation services through completion of a common intake application form in a One-Stop center (career center); or
- · Otherwise requested services from the Division of Rehabilitation Services; and
- Has provided the information necessary to initiate an assessment to determine eligibility and priority for services; and;
- Is available to complete the assessment process.

The application process and the explanation of state policies and procedures will be provided to each individual in that individual's native language or through the appropriate mode of communication.

4.2.3 Availability of application forms

The Division of Rehabilitation Services must ensure that its application forms are widely available throughout the state, particularly in the One-Stop centers (career centers) established under Section 121 of the Workforce Investment Act of 1998.

4.2.4 Intent to achieve an employment outcome

DRS is responsible for informing individuals, through its application process for vocational rehabilitation services, that individuals who receive services under the program must intend to achieve an employment outcome.

The applicant's completion of the application process for services is sufficient evidence of intent to achieve an employment outcome, and no additional demonstration on the part of the applicant is required. "Employment outcome" means entering or retaining full-time or, if appropriate, part-time competitive employment in an integrated labor market to the greatest extent practicable; supported employment; or any other type of employment that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Nothing in this policy shall be construed to create an entitlement to any vocational rehabilitation service.

5. <u>Trial Work Experiences, Extended Evaluation</u>

5.1 Trial work experiences

Trial work experiences are provided prior to determination of eligibility when it is necessary to explore the abilities, capabilities, and capacity to perform in work situations of an individual with a significant disability to determine if the individual can benefit from vocational rehabilitation services.

A case may not be closed from applicant status because the disability is too severe, unless the individual:

- Cannot take advantage of such experiences;
- Refuses trial work experiences or extended evaluation; or
- Cannot benefit from vocational rehabilitation services in terms of an employment outcome.

If the counselor has reason to believe that an SSI/SSDI recipient is unable to benefit in terms of an employment outcome, trial work experiences should be provided and eligibility should not be presumed.

5.1.1 Certification for trial work experiences

Trial work experiences are a diagnostic tool to help the counselor determine if the applicant is capable of performing competitive employment. The certification must demonstrate:

- The presence of a significant physical or mental disability which constitutes or results in a substantial impediment to employment; and
- An inability to make a determination that vocational rehabilitation services might benefit the individual in terms of an employment outcome without exploration of ability to perform in trial work experiences.

5.1.2 Basic Requirements

Trial work experiences must:

- Take place in the most integrated setting possible and may include supported employment, on-the-job training, and other experiences using realistic work settings (i.e. not a rehabilitation facility);
- Be consistent with the individual's rehabilitation needs (including appropriate supports) and informed choice;
- Be provided under an Individualized Plan for Employment (IPE);
- Be of sufficient variety and over a sufficient period of time to determine:
 - Eligibility for services; or
 - Clear and convincing evidence (to the highest degree of certainty) that the
 individual cannot benefit in terms of an employment outcome from VR services
 because of the severity of the disability. A case may not be closed from applicant
 status because the disability is too severe, except under limited circumstances
 when an individual cannot take advantage of or refuses trial work experiences.

Trial work experiences include supported employment, on-the-job training, and other experiences using realistic work settings.

5.2 Extended Evaluation

Extended evaluation may substitute for trial work experiences under very limited circumstances if:

- No service providers are available in the client's community for trial work experiences; or
- Options for trial work experiences have been exhausted.

The certification for extended evaluation must demonstrate:

- The presence of a significant physical or mental disability which constitutes or results in a substantial impediment to employment;
- An inability to make a determination that vocational rehabilitation services might benefit the individual in terms of an employment outcome without exploration of ability to perform through extended evaluation; and
- An explanation of why ability to benefit from services cannot be explored through trial work experiences.

5.2.1 Basic Requirements

Extended evaluation must:

- Take place in the most integrated setting possible, consistent with the individual's rehabilitation needs (including appropriate supports) and informed choice;
- Be provided under an IPE;
- Entail thorough vocational evaluation in a DRS facility or other community rehabilitation facility;
- Include only those services required to make an eligibility determination; and
- Be of sufficient variety and over a sufficient period of time to determine:
 - o Eligibility for services: or
 - Clear and convincing evidence (to the highest degree of certainty) that the individual cannot benefit in terms of an employment outcome from VR services because of the severity of the disability.

5.3 Closure from Trial Work Experiences or Extended Evaluation

5.3.1 Determination that the individual can benefit in terms of an employment outcome

The counselor must:

- Complete a certification of eligibility for vocational rehabilitation services; and
- If placed in an open priority category, assist the individual with developing an IPE.

5.3.2 Determination that the individual cannot benefit in terms of an employment outcome

The counselor must:

- Make a determination of ineligibility, based on clear and convincing evidence, after:
 - Providing an opportunity for discussion with the individual or, as appropriate, with the individual's representative;
 - Informing the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination. The written determination must include the reasons for the determination and the means of seeking remedy through due process;
 - Providing the individual with a description of services available from the Client Assistance Program;

- Referring the individual to other training or employment-related programs that are part of the One-Stop service delivery system under the Workforce Investment Act; Sec. 361.43(d)
- Reviewing the determination of eligibility within twelve (12) months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative;
- Discontinue services under the trial work experiences or extended evaluation IPE;
 and complete a certification of ineligibility.

6. <u>Eligibility, Order of Selection (Priority for Services), and Ineligibility</u>

6.1 Eligibility

6.1.1 Timeline for eligibility determination

The counselor must determine eligibility for vocational rehabilitation services as soon as possible, but not to exceed sixty (60) days, unless:

- The individual agrees to a specific extension of time because of exceptional and unforeseen circumstances beyond the control of DRS; or
- The individual is under a plan for trial work experiences or for extended evaluation to explore abilities, capabilities, and capacity to perform in work situations.

6.1.2 Presumption of eligibility

An individual who is eligible for Social Security Disability Insurance (SSDI) benefits or Supplemental Security Insurance (SSI) benefits based on his/her own disability or blindness is presumed to be eligible provided that the individual intends to achieve an employment outcome, unless DRS demonstrates by clear and convincing evidence that the disability is too severe for the individual to benefit in terms of an employment outcome.

"Employment Outcome" means entering or retaining full-time or, if appropriate, part-time competitive employment in an integrated labor market to the greatest extent practicable; supported employment; or any other type of employment that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Clear and convincing evidence means that DRS must have "a high degree of certainty" before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome.

6.1.3 Eligibility criteria

Eligibility is based on a determination by a qualified rehabilitation counselor that the applicant:

- Has a physical or mental impairment that constitutes or results in a substantial impediment to employment;
- Can benefit in terms of an employment outcome from vocational rehabilitation services (presumed unless there is clear and convincing evidence to the contrary, due to the severity of the disability); and
- Requires vocational rehabilitation services to prepare for, secure, retain, or regain employment.

6.1.4 Intent to achieve an employment outcome

Completion of the application for services demonstrates intent to achieve an employment outcome.

6.1.5 Eligibility criteria for supported employment

Eligibility for supported employment is based on:

- The individual's eligibility for vocational rehabilitation services;
- The determination that the individual has a most significant disability;
- Identification of supported employment as the appropriate goal based on a comprehensive assessment of rehabilitation needs (See Chapter 7, Supported Employment); and
- · Verification of the availability of extended services.

6.1.6 Assessment for determining eligibility

The assessment for determining eligibility and priority for services must be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice. The assessment for determining eligibility includes, to the extent necessary and appropriate:

- Referral to other programs and services;
- The provision of rehabilitation technology services to assess and develop the capacities of the individual to perform in a work environment;
- Use of existing information, to the maximum extent appropriate. This includes information:
 - o Used by education officials and the Social Security Administration;
 - o Provided by the individual and the individual's family; and
 - o From assessments for determining eligibility and vocational rehabilitation needs.

The use of existing data to determine eligibility is limited to information that describes the current functioning of the individual. It may be necessary to request review by the medical or psychological consultant to assist in determining if the available medical information continues to describe the current condition of the client.

6.2 Order of selection (priority for services)

6.2.1 Purpose

An order of selection is an organized and equitable method of serving individuals with disabilities if all eligible individuals cannot be served because of lack of financial or staff resources. The first priority is given to individuals with the most significant disabilities.

The order of selection ensures that services are continued for individuals already receiving services under an IPE and are provided to new clients in an open priority category. It ensures that adequate funds are available to provide diagnostic services for all new applicants to determine their eligibility.

6.2.2 Requirements

Upon implementation of an order of selection:

- DRS must continue to accept referrals and applications;
- The counselor must make all eligibility determinations in a timely manner;

 The counselor must refer individuals in a closed priority category to other federal and state programs, including other components of the statewide workforce investment system, best suited to the specific employment needs of the individual to assist him/her in efforts to prepare for, secure, retain, or regain employment;

Required procedures include:

- Notification to the individual of assignment to a closed priority category;
- Notification to the individual of the referral;
- Notification to the specific contact person or point of contact within the agency receiving the referral;
- Information and guidance on the most suitable services to assist the individual to prepare for, secure, retain, or regain employment; and
- The information and referral efforts must be documented in the case file.

If the priority category is open, services may be provided.

If the priority category is closed, the case will remain in eligible status, with no IPE completed, until the priority category is opened, the order of selection is lifted, the individual no longer needs services, or the individual requests that the case be closed.

If DRS cannot continue to serve all new Priority Category (PC) 1 cases, services will be provided to new PC-1 cases based on the date of application for services. Likewise, if DRS is able to open a closed priority category, but is not able to serve all cases on the waiting list, services will be provided based on the date of application for services.

6.2.3 Assignment to the highest priority category

- A client must be assigned to the highest priority category that is justifiable and must be reclassified into a higher priority category any time circumstances justify such a reclassification.
- A client may not be reclassified into a lower priority category once the IPE has been developed and signed.

6.2.4 Priority category designation

Priority Category 1	Eligible individuals who have most significant disabilities
Priority Category 2	Eligible individuals who have significant disabilities
Priority Category 3	Eligible individuals who do not have significant disabilities and
	whose vocational rehabilitation is expected to require multiple services
Priority Category 4	Eligible individuals who do not have significant disabilities and who
	cannot be classified into a higher priority category.

6.2.6 Significant disability defined

An individual who receives SSDI or SSI based on his or her own disability or blindness meets all criteria to be determined an individual with a significant disability (Priority Category 2) provided that he/she intends to achieve an employment outcome. These individuals do not have to require multiple services over an extended period of time.

Other than individuals who receive SSDI or SSI based on disability or blindness, an individual with a significant disability is one:

 Who has a severe physical or mental impairment that seriously limits one or more functional capacities such as mobility, communication, self-care, self-direction,

- interpersonal skills, work tolerance, or work skills in terms of an employment outcome; and
- Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services (2 or more primary services such as physical or mental restoration, training, or placement) over an extended period of time (6 months or more from the date that services are initiated); and
- Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disabilities, end-stage renal disease, or another disability or combination of disabilities determined, on the basis of an assessment for determining eligibility and vocational rehabilitation needs, to cause comparable substantial vocational functional limitations.

6.2.6 Most significant disability defined

An individual with a most significant disability is one who meets all of the criteria for having a significant disability and who has serious limitations in two (2) or more functional capacities such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome.

6.3 Determination of ineligibility

If an applicant is determined ineligible for services or if an eligible individual receiving services under an IPE is determined to be no longer eligible for services:

- The ineligibility determination shall be made only after providing an opportunity for full consultation with the individual, or, as appropriate, the individual's representative;
- The individual or, as appropriate, the individual's representative shall be informed in writing (supplemented as necessary by other appropriate modes of communication chosen by the individual), of the determination, as well as:
 - The reasons for the determination:
 - A description of the means for expressing any dissatisfaction with the determination, and the procedures for seeking remedy through administrative review, mediation, and/or fair hearing, including timelines; and
 - A description of the services available through the Client Assistance Program.
- The individual shall be referred to other training or employment-related programs that are part of the One-Stop service delivery system under the Workforce Investment Act.

A case may not be closed prior to determination of eligibility because the disability is too severe until trial work experiences have been completed, unless

- o The individual cannot take advantage of such experiences; or
- The individual refuses trial work experiences.

6.4 Review of determination of ineligibility

The counselor must review any ineligibility determination based on a finding that the individual is incapable of benefiting from services in terms of an employment outcome within twelve (12) months; and annually thereafter if requested by the individual or by the individual's representative.

A review is not required if the individual refuses it, is no longer present in the state, cannot be located, or has a medical condition that is rapidly progressive or terminal.

7. Informed Choice

7.1 Individuals who must be provided informed choice opportunities

Applicants and eligible individuals or, as appropriate, their representatives, must be provided information and support services to assist them in exercising informed choice throughout the rehabilitation process.

7.2 Requirements

Informed choice requirements include:

- Informing each applicant and eligible individual, including students in the Transition from School to Work program, through appropriate modes of communication, about the availability of and opportunities to exercise informed choice;
- Giving information about the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice;
- Assisting applicants and eligible individuals in exercising informed choice in decisions related to provision of assessment services;
- Developing and implementing flexible procurement policies and methods that facilitate the provision of vocational rehabilitation services that afford eligible individuals meaningful choices among methods used to procure vocational rehabilitation services; and
- Assisting eligible individuals or, as appropriate, their representatives, in acquiring
 information that enables them to exercise informed choice in the development of
 their Individualized Plans for Employment (IPEs) with respect to the selection of the
 employment outcome; specific vocational rehabilitation services needed to achieve
 the employment outcome; service providers; employment setting; settings in which
 the services will be provided; and methods available for procuring the services;

7.3 Assessment and development of the Individualized Plan for Employment

During the assessment for eligibility determination and vocational rehabilitation needs and during the development of the Individualized Plan for Employment (IPE), the Division of Rehabilitation Services (DRS) must ensure that the individual (or representative) is given information or is assisted in acquiring information necessary to make informed choices. This information must include, at a minimum:

- Cost, accessibility, and duration of potential services;
- Consumer satisfaction with those services, to the extent that information is available;
- Qualifications of potential service providers;
- Types of services offered by the potential providers;
- Degree to which services are provided in integrated settings; and
- Outcomes achieved by individuals working with service providers, to the extent that information is available.

7.4 Methods or sources of information

In providing or assisting the individual or the individual's representative in acquiring the required informed choice information, DRS may use, but is not limited to the following:

- Lists of services and service providers;
- Periodic consumer satisfaction surveys and reports;
- Referrals to other consumers, consumer groups, or disability advisory councils
 qualified to discuss the services or service providers;
- Relevant accreditation, certification, or other information relating to the qualifications of service providers; or
- Opportunities for individuals to visit or experience various work and service provider settings.

8. Comparable services and benefits

8.1 Definition

Comparable services and benefits are services that are:

- Provided or paid for, in whole or in part, by other federal, state, or local public entities, health insurance, or employee benefits;
- Available to the individual at the time needed to ensure the individual's progress toward achieving the employment outcome in the IPE;
- Commensurate to the services that the individual would otherwise receive from DRS.

Comparable benefits do not include awards and scholarships that are based on merit.

8.2 Responsibilities under the law

If a public entity other than DRS is required under federal or state law, state policy, or interagency agreement to provide or pay for any vocational rehabilitation services (e.g. interpreter services) other than those exempt services shown in 8.4, that public entity must provide or pay for those services or make arrangements for them to be paid.

If another responsible public entity fails to provide or pay for vocational rehabilitation services for an eligible individual, DRS must provide or pay for those services, but may claim reimbursement from the public entity that failed to provide or pay for those services.

8.3 Availability of comparable benefits and services

Prior to the provision of any vocational rehabilitation services, with the exception of exempt services listed in 8.4 to an eligible individual or family members, DRS must determine if comparable services and benefits exist under any other program and if they are available to the individual, unless determination of availability would interrupt or delay:

- The individual's progress toward achievement of the employment outcome listed on the IPE;
- Immediate job placement; or

 Provision of services to any individual determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.

8.4 Exempt services

The following services are exempt from the requirement to determine the availability of comparable services and benefits:

- Assessment to determine eligibility and vocational rehabilitation needs:
- Counseling and guidance, including information and support services to assist an individual in exercising informed choice;
- Referral and other services to secure needed services from other entities, including other components of the statewide workforce investment system, if those services are not available through DRS;
- Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;
- Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;
- The foregoing services provided as post-employment services.

8.5 Provision of services

If comparable services or benefits exist and are available under any other program at the time needed to ensure progress toward achieving the employment outcome on the IPE, DRS must use those comparable services or benefits to meet, in whole or part, the costs of the vocational rehabilitation services.

If comparable services or benefits exist but are not available to the individual at the time needed to ensure progress toward achieving the employment outcome on the IPE, DRS must provide vocational rehabilitation services until those comparable services and benefits become available.

9. <u>Individualized Plan for Employment (IPE)</u>

9.1 General provisions

- An Individualized Plan for Employment (IPE) must be developed and implemented in a timely manner for each eligible individual who may be provided services under the order of selection.
- Services must be provided in accordance with the provisions of the IPE.
- The Division of Rehabilitation Services (DRS) must conduct an assessment to determine the employment outcome and the nature and scope of vocational rehabilitation services to be included in the IPE.
- The IPE must:
 - Be designed to achieve the specific employment outcome that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and
 - To the maximum extent appropriate, result in employment in an integrated setting.

9.2 Information that must be provided

DRS must provide the following information to each eligible individual or, as appropriate, the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or the individual's representative:

- Information on the available options for developing an IPE, including the option that
 the eligible individual or, as appropriate, the individual's representative may develop
 all or part of the IPE either:
 - Without assistance from DRS; or
 - With assistance from a DRS counselor; a qualified vocational rehabilitation counselor not employed by DRS; or other resources.
- Additional information including:
 - The full range of components that must be included in an IPE, as appropriate to each individual;
 - An explanation of criteria for determining the individual's financial commitments under an IPE;
 - The availability of assistance in completing DRS forms required as part of the IPE:
 - Additional information that the eligible individual requests or that DRS determines to be necessary to the development of the IPE;
 - A description of the available rights and remedies including, as appropriate, mediation or fair hearing;
 - o Information on the Client Assistance Program, including contact information.

9.3 Mandatory procedures

- The IPE is a written document that must be prepared on forms provided by DRS;
- The IPE must be developed and implemented in a manner that gives the individual the opportunity to exercise informed choice in selecting:
 - The employment outcome and the employment setting;
 - The specific services required to achieve the employment outcome, including the settings in which services will be provided;
 - The entities that will provide the vocational rehabilitation services; and
 - o The methods available for procuring the services.
- The IPE must be agreed to and signed by the eligible individual or, as appropriate, the individual's representative; and approved and signed by a DRS counselor;
- A copy of the IPE and any amendments to the IPE are provided to the eligible individual or, as appropriate, to the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, the individual's representative;
- The IPE must be reviewed at least annually by the counselor and the eligible individual or, as appropriate, the individual's representative, to assess the individual's progress toward achieving the identified employment outcome;
- The IPE is amended, as necessary, by the individual or, as appropriate, the
 individual's representative, in collaboration the DRS counselor, if there are
 substantive changes in the employment outcome, the services to be provided, or the
 service providers;
- Amendments to the IPE do not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual's representative and by the DRS counselor;
- An IPE for a student with a disability receiving special education services must be coordinated with the individual's Individualized Education Program (IEP) in terms of

the goals, objectives, and services identified in the IEP and must be developed in accordance with the terms of the interagency agreement with the Department of Education.

9.4 Standards for developing the IPE

 The IPE must be developed as soon as possible after all necessary information has been received, but no later than six (6) months from the date of eligibility determination. If the IPE cannot be developed within six (6) months because of informed choice issues or other justifiable circumstances, the counselor must document the justification in the case file. In transition from school to work cases, the IPE must be completed prior to exit from school.

9.5 Information for preparing the IPE

- If additional information, beyond that used to determine eligibility and priority for services, is required to determine the employment outcome and the nature and scope of services, the rehabilitation counselor must conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment services, of the eligible individual, in the most integrated setting possible.
- In preparing the comprehensive assessment, DRS must use, to the maximum extent
 possible, existing current information including information available from other
 agencies and service providers; information provided by the individual and the
 individual's family; and information obtained under the assessment for determining
 eligibility and vocational rehabilitation needs.

9.6 Mandatory components of the IPE

Each IPE must include:

- A description of the specific employment outcome chosen by the eligible individual that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice; and to the maximum extent appropriate, results in employment in an integrated setting;
- A description of the specific rehabilitation services that are required to achieve the employment outcome and that are provided in the most integrated setting that is appropriate and consistent with the informed choice of the eligible individual;
- Timelines for the achievement of the employment outcome and for the initiation of services:
- A description of the service providers chosen by the eligible individual or, as appropriate, the individual's representative, and the methods used to procure those services;
- A description of the criteria that will be used to evaluate progress toward achievement of the employment outcome;
- The terms and conditions of the IPE, including, as appropriate, the responsibilities of DRS; the responsibilities of the eligible individual in relation to achieving the employment outcome, participation in the cost of services, and applying for and securing comparable services and benefits; and the responsibilities of other entities providing comparable services or benefits; and
- Statements, as determined to be necessary, regarding the expected need for postemployment services; the terms and conditions for provision of any post-employment services and, if appropriate, plans for comparable services or benefits.

9.7 IPE for supported employment

An IPE for an individual with a most significant disability for whom supported employment is appropriate must:

- Specify the supported employment services to be provided by DRS;
- Specify the expected extended services needed, which may include natural supports;
- Identify the source of extended services. If it is not possible to identify the source of extended services at the time the IPE is developed, the IPE must include a description of the basis for concluding that there is a reasonable expectation that those sources will become available;
- Provide for periodic monitoring to ensure that the individual is making satisfactory
 progress toward meeting the weekly work requirement established in the IPE by the
 time of transition to extended services;
- Provide for the coordination of services with those provided under other federal or state programs;
- If job skills training is provided, identify that the training will be provided on site; and
- Include placement in an integrated setting for the maximum number of hours
 possible based on the unique strengths, resources, priorities, concerns, abilities,
 capabilities, interests, and informed choice of the individual.

10. Participation of Individuals in Cost of Services Based on Financial Need

10.1 Expenditure of agency funds

All expenditures for client services must be consistent with the vocational rehabilitation needs of the individual and directly connected to achievement of the employment outcome identified in the Individualized Plan for Employment (IPE).

All expenditures must be consistent with the fee schedule and purchasing procedures approved by the Division of Rehabilitation Services (DRS).

Any vendor who accepts the DRS authorization for services must agree not to charge the client or his/her family for any balance after DRS has paid for those services.

Exceptions to the above may be approved, as appropriate, based on individual needs and circumstances.

10.2 Client participation in cost of services

Prior to expenditure of DRS funds, the eligible individual's financial circumstances must be reviewed and documented to determine the extent of the individual's participation in the cost of those services that require such participation.

- Participation in the cost of training services at a post-secondary institution
 participating in federal financial aid programs is based on the expected family
 contribution (EFC) as determined by that institution's financial aid office. The EFC is
 based on the individual's Free Application for Federal Student Aid (FAFSA) and
 reported to the college or university on the individual's Student Aid Report (SAR).
- Participation in the cost of all services other than training services at a postsecondary institution participating in federal financial aid programs is based on the

adjusted gross income (AGI) of the household as reported on the previous year's federal income tax form(s) or on other countable income, less allowable deductions.

No requirement for financial participation of the individual may be applied as a condition for furnishing any vocational rehabilitation service if the individual has been determined eligible for Social Security disability benefits (SSDI) or Supplemental Security Income disability benefits (SSI).

10.3 Services provided without regard to financial circumstances

Financial circumstances must not be considered a condition for furnishing the following services required for participation in vocational rehabilitation services:

- Assessment for determining eligibility and priority for services, except any nonassessment services provided to an individual with a significant disability during trial work experiences or extended evaluation;
- Assessment for determining vocational rehabilitation needs;
- Vocational rehabilitation counseling and guidance;
- Referral services and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system, and to advise those individuals about the client assistance program (CAP);
- Job-related services to include job search and placement assistance, job retention services, follow-up services, and follow-along services;
- Personal assistance services, which means a range of services designed to assist
 an individual with a disability to perform daily living activities on or off the job that the
 individual would typically perform without assistance if the individual did not have a
 disability. The services must be necessary to the achievement of an employment
 outcome and may be provided only while the individual is receiving other vocational
 rehabilitation services. The services may include training in managing, supervising,
 and directing personal assistance services;
- Any auxiliary aid or service (e.g., interpreter services, reader services, rehabilitation teaching, orientation and mobility services, job coaching services, etc.) that an individual with a disability requires under section 504 of the Act (29 U.S.C. § 794) or the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.), or regulations implementing those laws, in order for the individual to participate in the VR program;
- Services provided through the Tennessee Rehabilitation Center (TRC) in Smyrna or through community TRCs.

10.4 Services for which financial circumstances must be considered

The following services may not be provided until available client resources have been applied toward the cost and available comparable services and benefits have been considered. Exceptions as warranted may be granted by the appropriate Director of Field Operations to ensure that the level of the individual's participation in the cost of vocational rehabilitation services is reasonable; based on the individual's financial need, including consideration of any disability-related expenses paid by the individual; and not so high as to effectively deny the individual a necessary service.

- Physical or mental restoration, including medical care for an acute condition;
- Maintenance and transportation, except as required to determine eligibility, priority for services, or the nature and scope of services to be provided under an IPE;

- Tuition for post-secondary training at universities, community colleges, vocational/technical schools, business schools, other training facilities that provide formal classroom training:
- Books and training supplies;
- Computers:
- Incidental expenses;
- Assistive technology devices, including any item, piece of equipment, or product system used to increase, maintain, or improve the functional capabilities of an eligible individual. The device(s) must be necessary to the achievement of an employment outcome;
- Assistive technology services that directly assist an eligible individual in the selection, acquisition, or use of an assistive technology device;
- Rehabilitation technology that applies technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities. The term includes rehabilitation engineering services, vehicle modifications, assistive technology devices, and assistive technology services.
- Tools and supplies;
- Initial stock (including livestock), motor vehicles, supplies, and other goods approved for self-employment;
- Post-employment services or services to family members, except for those services listed in 10.3 that are provided without regard to financial circumstances;
- Any other goods or services not excluded under 10.3.

11. <u>Transition From School To Work</u>

11.1 Definition

Transition services is a coordinated set of activities for a student designed within an outcome-oriented process that:

- Promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing education, adult services, independent living, or community participation; and
- Must promote or facilitate the achievement of the employment outcome identified in the student's Individualized Plan for Employment (IPE).

Transition activities:

- Must be based upon the individual student's needs, taking into account the student's preferences and interests, and
- Must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

11.2 Eligibility

The Division of Rehabilitation Services (DRS) counselor has the sole responsibility for determining eligibility for vocational rehabilitation services.

11.3 Individualized Plan for Employment (IPE)

The IPE for a student determined to be eligible for vocational rehabilitation services must be:

- Developed and approved before the student leaves the school setting and
- Developed as early as possible during the transition planning process.

12. Scope of Services

Services provided by the Division of Rehabilitation Services (DRS) must be appropriate to the vocational rehabilitation needs and consistent with the informed choice of each individual.

The following services must be available to assist the applicant/eligible individual in preparing for, securing, retaining or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

- Assessment for determining eligibility and priority for services. If appropriate, a rehabilitation technology assessment may be provided;
- Assessment for determining vocational rehabilitation needs to be included in the Individualized Plan for Employment (IPE). If appropriate, a rehabilitation technology assessment may be provided;
- Vocational rehabilitation counseling and guidance, including information and support services to assist with exercising informed choice.
- Referral and other services to secure services from other agencies, including other components of the statewide workforce investment system and the Client Assistance Program;
- Physical and mental restoration services, if those services are not readily available through health insurance or other comparable service or benefits.
- Vocational and other training services. These services may include personal and vocational adjustment training, books, tools, and other training materials. Training services in any institution of higher education are subject to the requirement to seek comparable benefits;
- Maintenance, which is financial support provided for expenses such as food, shelter, and clothing, that are:
 - o In excess of the individual's normal expenses of the individual; and
 - Made necessary by the individual's participation in assessment or receipt of vocational rehabilitation services under an IPE.
- Transportation needed for participation in assessments and vocational rehabilitation services:
- Vocational rehabilitation services to family members if necessary to enable the individual to achieve an employment outcome;
- Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind. These services must be provided by qualified personnel;
- Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind:

- Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;
- Supported employment services;
- Personal assistance services needed to assist the individual with-performance of daily living activities. These services may include training in managing, supervising, and directing personal assistance services;
- · Post-employment services;
- Occupational licenses, tools, equipment, initial stocks, and supplies;
- Rehabilitation technology including vehicular modification, telecommunications, sensory, and other technological aids and devices.
- Transition services to assist the individual to move from school to post-school activities and eventually to the employment outcome.
- Technical assistance and other consultation services needed for a self-employment goal;
- Other goods and services determined necessary for achievement of an employment outcome.

13. Record of Services

The Division of Rehabilitation Services (DRS) must maintain a case file for each applicant and eligible individual that includes, to the extent pertinent, the following:

- Documentation that supports any determination of eligibility or ineligibility;
- Documentation that justifies a case closure if the applicant declines to participate in or is unavailable to complete an assessment to determine eligibility and priority for services;
- Documentation supporting a determination that an individual has a significant or most significant disability;
- Documentation supporting the need for and the plan relating to any use of trial work experiences or extended evaluation of an individual with a significant disability;
- The Individualized Plan for Employment (IPE) and any amendments;
- Documentation describing the extent to which the applicant/eligible individual
 exercised informed choice regarding assessment services and the development of
 the IPE with respect to the selection of the employment outcome, the specific
 vocational rehabilitation services needed to achieve the employment outcome, the
 entity to provide the services, the employment setting, the settings in which the
 services will be provided, and the methods to procure the services;
- Justification to support any non-integrated setting for services or the employment outcome:
- For those individuals who obtain competitive employment, verification that the
 individual is compensated at or above the minimum wage and that the individual's
 wages and benefits are not less than customarily paid by the employer for the same
 or similar work performed by individuals without disabilities;
- For those individuals placed in an extended (non-integrated) employment setting, documentation of the results of the annual reviews, the individual's input into those reviews, and the individual's (or the individual's representative's) acknowledgement that those reviews were conducted.
- Documentation concerning any action or decision resulting from a request by an individual for a due process review of determinations made by DRS staff;

- Document of any request by an applicant or eligible individual to amend information in the case file that he/she believes is inaccurate or misleading, if the information is not subsequently amended.
- Documentation of referrals to other programs, including the career centers and other components of the workforce investment system and documentation on the nature and scope of services provided by DRS to the individual;
- For cases closed with a successful employment outcome, documentation that demonstrates that the services provided under the individual's IPE contributed to the achievement of the employment outcome;
- For cases closed with a successful employment outcome, documentation that all of the requirements for such a closure have been met;
- Documentation of the provision of counseling and guidance services.

14. <u>Employment</u>

14.1 Definitions

- Employment outcome means entering or retaining full-time or, if appropriate, parttime competitive employment in the integrated labor market to the greatest extent
 practicable; supported employment; or any other type of employment, including selfemployment, telecommuting, or business ownership, that is consistent with an
 individual's strengths, resources, priorities, concerns, abilities, capabilities, interests,
 and informed choice.
- Competitive employment means work in the competitive labor market that is
 performed on a full-time or part-time basis in an integrated setting; and for which an
 individual is compensated at or above the minimum wage, but not less than the
 customary wage and level of benefits paid by the employer for the same or similar
 work performed by individuals who do not have disabilities.

14.2 Services leading to employment

All services provided to eligible individuals must be designed to achieve an employment outcome that is, to the maximum extent appropriate, in an integrated setting.

15. Supported Employment

15.1 Definitions

15.1.1 Supported employment (SE)

- Competitive employment in an integrated setting or employment in integrated work settings in which individuals are working toward competitive employment, with ongoing support services, that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.
- Supported employment is provided to those individuals with the most significant disabilities:

- For whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of a significant disability; and
- Who, because of the nature and severity of their disabilities, need intensive supported employment services from the Division of Rehabilitation Services (DRS) and extended services after transition from services provided by the DRS; or
- Transitional employment for individuals with the most significant disabilities due to mental illness.

15.1.2 Transitional employment for individuals with mental illness

A series of continuing sequential job placements in competitive work in integrated settings with ongoing support services until job permanency is achieved.

15.1.3 Supported employment services

Ongoing support services and other appropriate services provided by DRS that are needed to support and maintain an individual with a most significant disability in supported employment:

- For a period of time not to exceed 18 months unless, under special circumstances, the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the Individualized Plan for Employment (IPE); and,
- Following case closure (if needed), as post-employment services that are unavailable from an extended service provider and are necessary to maintain or regain the job placement or advancement in employment.

15.1.4 Competitive employment

- Employment in the competitive labor market that is performed on a full-time or parttime basis in an integrated setting; and
- For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who do not have a disability.

15.1.5 Integrated setting

- With respect to the provision of services, a setting typically found in the community in which eligible individuals interact with individuals who do not have disabilities (other than those who are providing services to the eligible individuals with disabilities).
- With respect to an employment outcome, a setting typically found in the community in which eligible individuals interact with individuals without disabilities to the same extent as would be found in comparable positions elsewhere.

15.1.6 Ongoing support services

Services that are:

- Needed to support and maintain an individual with a most significant disability in supported employment;
- Based on a determination by DRS of the individual's need as specified in the IPE;
- Necessary to determine an individual's supported employment needs;
- Furnished by DRS from the time of job placement until transition to extended services;

- Furnished by DRS (if needed) as post-employment services following transition to extended services;
- Furnished by the service provider as extended services provided throughout the individual's term of employment in a particular job placement or multiple placements under transitional employment.

Ongoing support services must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on:

- At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or
- Twice-monthly off-site meetings with the individual (if the IPE provides for off-site monitoring under specific circumstances, especially at the request of the client).

Ongoing support services must consist of:

- Any particularized assessment supplementary to the comprehensive assessment needed to determine eligibility for vocational rehabilitation services; the planned employment outcome; and the nature and scope of vocational rehabilitation services to be included in the IPE.
- The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;
- Job development and training;
- Social skills training;
- Regular observation or supervision of the individual;
- Follow-up services including regular contact with the employers, the individuals, the
 parents, family members, guardians, advocates or authorized representatives of the
 individuals, and other suitable professional and informed advisors, in order to
 reinforce and stabilize the job placement;
- Facilitation of natural supports at the worksite;
- · Any other vocational rehabilitation services; or
- Any service similar to the foregoing services.

15.1.7 Extended services

Ongoing support services and other appropriate services needed to maintain an individual with a most significant disability in supported employment. These services are provided by another state entity, a private nonprofit organization, employer, or any other appropriate resource. Extended services are not paid from DRS funds after the individual has made the transition from DRS services.

15.2 Eligibility

Eligibility and vocational rehabilitation needs for supported employment may be determined from a combination of:

- Existing information.
- Supplemental assessments.
- Experiences in training and simulated work situations.
- Trial work experiences.

An individual shall be eligible to receive supported employment services if:

- The individual is eligible for vocational rehabilitation services; and
- The individual is determined to be an individual with a most significant disability; and
- An assessment, as described in 15.2.1 has been completed that documents supported employment as the most appropriate service.

15.3 Client participation in cost

The provision of supported employment services (evaluations, placement training and stabilization) does not require a determination of client participation in cost. The provision of any support services, such as transportation or noon meals, is based on determination of client participation in cost.

15.4 Individualized Plan for Employment

An IPE for an individual with an employment outcome of supported employment must:

- Specify the supported employment services to be provided by DRS;
- Specify the expected extended services needed, which may include natural supports;
- Identify the source of extended services or, to the extent that it is not possible to
 identify the source of extended services at the time the IPE is developed, include a
 description of the basis for concluding that there is a reasonable expectation that
 those sources will become available. These sources must be identified as being
 provided by a community rehabilitation provider (CRP) with funding and supports
 from another state entity or other comparable benefit; or provided by a CRP with no
 additional funding;
- Provide for periodic monitoring to ensure that the individual is making satisfactory
 progress toward meeting the weekly work requirement established in the IPE by the
 time of transition to extended services;
- Provide for the coordination of services provided under an IPE with services provided under other individualized plans established under other federal or state programs;
- To the extent that job skills training is provided, identify that the training will be provided on site; and
- Include placement in an integrated setting for the maximum number of hours
 possible based on the unique strengths, resources, priorities, concerns, abilities,
 capabilities, interests, and informed choice of individuals with the most significant
 disabilities.

16. Self-Employment Services

16.1 General

Self-employment can be an appropriate employment outcome based on individual employment needs and consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

16.2 Scope

DRS will assist eligible individuals seeking self-employment outcomes with technical assistance and other consultation services for a qualified business to the extent that the statewide workforce investment system authorizes for these services for individuals pursuing self-employment. This assistance includes services to:

- Conduct market analyses
- Develop business plans

Access other appropriate resources.

Additionally, DRS will assist with funding start-up costs as defined in 16.3.5.

16.3 Definitions

16.3.1 Self-employment

Self-employment means an employment outcome in which the individual is the single owner of a sole proprietorship or a partner in a partnership and operates and maintains a qualified business that generates a competitive wage and will be self-sustaining.

16.3.2 Qualified business

A qualified business is an enterprise that involves providing a service or producing a product. This can include:

- Community business venture,
- · Independent contractor,
- Shop or office in the home,
- · Farming, including sharecroppers.

A qualified business does not include:

- Any enterprise involving illegal or sexually explicit activities,
- Hobbies or any other activities pursued for pleasure or relaxation and not as a main occupation.

16.3.3 Self-employment assessment

An individual seeking a self-employment outcome must be assessed to determine the individual's knowledge, ability, motivation and personal commitment to establish, operate, maintain, and sustain a qualified business.

16.3.4 Business plan

An individual seeking a self-employment outcome must complete a thorough and well-researched business plan. The plan must address:

- Start-up costs
- Any existing business resources
- Other sources of funding
- Sufficient resources for any capital expenditures
- Operations and marketing
- Ongoing expenses
- Insurance coverage for business requirements
- Likelihood of profitability within a reasonable timeframe.

16.3.5 Start-up costs

Start-up costs include costs for:

- Initial stocks and supplies
- Tools
- Business licenses and fees
- First month's cost for:
 - Advertising and marketing;
 - Rent and utilities;

- o Business insurance:
- o Telephones and internet service; and
- Accounting service.

Start-up costs do not include capital expenditures such as:

- Equipment;
- Vehicles;
- Machinery or furniture;
- Patents or franchise rights;
- Land:
- Building construction or improvements;
- Working capital;
- Underwriting of any type of loan;
- Investment funding; and
- Any other similar costs.

16.3.6 Funding start-up costs

Funding for self-employment services will be limited to one-time start-up costs under 16.3.5 required for the business to begin operation, less individual participation in the cost of services.

16.3.7 Participation in cost of services

Individuals seeking self-employment outcomes will be assessed to determine the amount of participation in the cost of services as provided in Section 10. Individuals who receive Social Security disability benefits under Title II or Title XVI are exempt from financial participation.

16.3.8 Termination of self-employment services

16.3.8.1 Case closed unsuccessfully

- For reasons provided in Section 17.3;
- For failure to comply with the approved business plan, including failure to meet all federal, state and local laws governing the operation of the business.

16.3.8.2 Successful employment outcome

- The following requirements must be met prior to successful case closure:
- The business is generating sufficient income to cover all required business expenses and associated impairment-related expenses, if applicable; and
- The individual's required income goal has been reached; and
- The individual and counselor agree that technical and managerial skills are adequate for on-going business management and continued growth.

17. Case Closure

An individual's case shall be closed when it has been determined that planned services are completed and additional vocational rehabilitation services are not necessary or no longer appropriate.

A case is closed when it has been determined that:

- The individual is not eligible for services; or
- The individual achieved an employment outcome; or
- The individual did not achieve an employment outcome

17.1 Individual not eligible for services

The Division of Rehabilitation Services (DRS) may not close an applicant's case prior to making a determination of eligibility—unless he/she declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority category. The counselor must make a reasonable number of attempts to contact the applicant (or applicant's representative) to encourage participation.

A case may not be closed prior to determination of eligibility with the reason "disability too severe" until trial work experiences, or extended evaluation if appropriate, have been completed, unless the client cannot take advantage of or refuses trial work experiences or extended evaluation.

17.2 Individual achieved an employment outcome

An individual is determined to have achieved an employment outcome only if all of the following requirements are met:

- The individual has achieved the employment outcome that is described in the Individualized Plan for Employment (IPE) and any amendments; and
- The employment outcome is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and
- The employment outcome is in the most integrated setting possible; and
- The employment outcome is maintained for at least ninety (90) days; and
- Both the individual and the counselor consider the employment to be satisfactory and agree that the individual is performing well in the job; and
- The individual is informed of the availability of post-employment services.

17.3 Individual did not achieve an employment outcome

An individual is determined not to have achieved an employment when the individual:

- Refuses services or fails to participate in spite of reasonable efforts to encourage participation; or
- Is unavailable to participate in vocational rehabilitation services.

18. <u>Post-employment</u>

18. 1 Definition

Post-employment services are vocational rehabilitation services that are provided after the individual has achieved a successful employment outcome. These services must be those necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

18.2 Requirements

Post-employment services are subject to the same requirements as services leading to employment, including the requirement to consider and seek comparable benefits and services.

18.3 Individualized Plan for Employment

Post-employment services are provided under the terms of an Individualized Plan for Services.

18.4 Closure from post-employment services

The record of services of an individual who has completed post-employment services may be closed when:

- The post-employment services identified on the IPE have been completed; and
- The employment outcome identified on the post-employment IPE has been achieved or maintained.

19. <u>Annual Review of Individuals in Extended Employment or Under Special</u> <u>Certificate Provisions of the Fair Labor Standards Act</u>

19.1 Definition

Extended employment means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides:

- Compensation in accordance with the Fair Labor Standards Act; and
- Any needed support services to an individual with a disability to enable the individual
 to continue to train or otherwise prepare for competitive employment, unless the
 individual through informed choice chooses to remain in extended employment.

19.2 Requirements

The Division of Rehabilitation Services (DRS) must:

Annually review and reevaluate the status/rehabilitation needs of each client whose
case was closed in an extended employment setting in a community rehabilitation
program or in any other setting in which the individual is paid under the provisions of
the Fair Labor Standards Act, section 14(c) in order to determine the interests,

- priorities, and needs of the individual with respect to competitive employment or training for competitive employment; and
- Conduct this review for two (2) years after the individual achieves the employment outcome; and
- Conduct this review in subsequent years if requested by the individual or, if appropriate, the individual's representative;
- Solicit the input of the individual or representative and obtain the signed acknowledgment that the review and reevaluation have taken place.
- The counselor must make maximum efforts when reevaluating the individual's status
 and rehabilitation needs, including indentifying and providing vocational rehabilitation
 services, reasonable accommodations, and other necessary support services, to
 assist the individual in engaging in competitive employment.

20. Due Process

20.1 Client and applicant rights

An applicant or eligible individual who is dissatisfied with any determination made by Division of Rehabilitation Services (DRS) personnel that affects the provision of vocational rehabilitation services may request or, if appropriate, may request through the individual's representative, a timely review of that determination.

- An applicant/eligible individual or, as appropriate, the individual's representative must be given notice of:
 - The right to an informal administrative review;
 - The right to an impartial fair hearing;
 - The right to pursue mediation;
 - Contact information for filing of requests for mediation or fair hearings;
 - o The manner in which a mediator or impartial hearing officer is selected;
 - The availability of and contact information for the Client Assistance Program (CAP) to assist the individual with mediation or impartial fair hearings.

The notice described above must be provided in writing:

- When the individual applies for vocational rehabilitation services;
- When the individual is assigned to a priority category;
- When the IPE is developed; and
- Whenever vocational rehabilitation services are reduced, suspended, or terminated.
- The individual or individual's representative has the right to submit evidence during informal administrative reviews, mediation sessions or fair hearings;
- The individual may be represented during informal administrative review, mediation or fair hearings by counsel or other advocate.
- The Division of Rehabilitation Services (DRS) may not suspend, reduce or terminate disputed services pending resolution through informal administrative review, mediation, or fair hearing unless:
 - The individual or the individual's representative requests a suspension, reduction, or termination of services; or
 - DRS has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.
- Applicants who are found ineligible for vocational rehabilitation services and

previously eligible individuals who are determined to be no longer eligible for vocational rehabilitation services may challenge the determinations of ineligibility through the review process.

20.2 Informal administrative review

An informal administrative review may be requested by the individual or the individual's representative to resolve a dispute without conducting mediation or a fair hearing.

The informal administrative review may not be used to deny an individual's right to a fair hearing or to pursue mediation and is not a prerequisite to a fair hearing or mediation.

20.3 Mediation

An applicant/eligible individual may request mediation to resolve a dispute. The following provisions apply:

- Participation in the mediation process is voluntary on the part of the individual and on the part of DRS;
- Use of the mediation process is not used to deny or delay the individual's right to a fair hearing;
- At any point in the mediation process, either party or the mediator may elect to terminate the mediation. If mediation is terminated, either party may pursue resolution through a fair hearing;
- Mediation is conducted by a qualified and impartial mediator who must be selected on a random basis from a list of qualified and impartial mediators maintained by the state:
- Mediation must be scheduled and conducted in a timely manner and held in a location and manner convenient to both parties;
- Discussions occurring during mediation must be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings;
- The parties to mediation may be required to sign a confidentiality pledge before the process begins;
- An agreement reached through mediation must be described in a written mediation agreement that is developed by the parties with the assistance of the mediator and signed by both parties. Copies of the agreement must be sent to both parties;
- The state must pay the costs of mediation but is not required to pay for any costs related to legal representation of the individual.

20.4 Fair Hearing

- An individual has a right to a fair hearing by an impartial hearing officer to be held within 60 days of the request for review of a DRS determination, unless resolution is achieved before the 60th day or the parties agree to a specific extension of time.
- An individual requesting a fair hearing must make the request within thirty (30) calendar days of notification of the disputed decision or within 30 calendar days after the date of an informal administrative review or mediation. Time is measured from the date of the notice. A fair hearing will be scheduled only if the request is filed within the time limit, unless good cause can be shown. Good cause exceptions are determined by the Commissioner or Commissioner's designee in the Department of Human Services Appeals and Hearings Unit.
- The individual must be given the opportunity to present witnesses and to examine all witnesses and relevant information and evidence.
- The impartial hearing officer must be selected from a list of qualified impartial hearing officers maintained by the state. Impartial hearing officers included on the list must

be jointly identified by DRS and the State Rehabilitation Council and selected on a random basis.

- The impartial hearing officer must:
 - Make a decision based on the approved state plan, the Act, federal vocational rehabilitation regulations, and state regulations and policies that are consistent with federal requirements; and
 - o Provide a written report of the findings and grounds for the decision within thirty (30) calendar days of the hearing.
- The decision of the hearing officer is final except that either party may request an impartial administrative review or bring civil action if dissatisfied with the decision.

20.5 Administrative review of hearing officer's decision

Any request for administrative review must be made within twenty (20) days of the mailing of the impartial hearing officer's decision and must be conducted by the Commissioner of the Department of Human Services or designee who:

- Provides both parties with an opportunity to submit additional evidence and information:
- May not overturn or modify the hearing officer's decision, or any part of that decision, that supports the position of the applicant or eligible individual unless the reviewing official concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous because it is contrary to the approved State plan, the Act, federal vocational rehabilitation regulations, or state regulations and policies that are consistent with federal requirements;
- Makes an independent, final decision following a review of the entire hearing record and provides the decision in writing, to both parties within thirty (30) days of the request;

May not delegate responsibility for making the final decision to any employee of the Division of Human Services:

The decision of the Commissioner of the Department of Human Services or the Commissioner's designee is final unless either party brings a civil action.

20.6 Civil action

Any party who disagrees with the decision of the Commissioner of the Department of Human Services may bring civil action.

If a party brings a civil action to challenge the final decision of a hearing officer or of the Commissioner of Department of Human Services, that final decision must be implemented while court review is pending.